

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TONI WARDEN,

Plaintiff,

v.

No. CIV-13-1101 MV/LAM

DIRECTV, LLC and MASTEC, INC.,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE DEFENDANT
DIRECTV, LLC'S MOTION TO COMPEL [Doc. 30]**

THIS MATTER is before the Court on *Defendant DIRECTV, LLC's Motion to Compel* (Doc. 30), filed November 7, 2014. No response to the motion has been filed, and the time for doing so has passed. Having considered the motion, record of the case, and relevant law, the Court **FINDS** that the motion shall be **DENIED without prejudice**.

In its motion, Defendant DIRECTV asks the Court to compel Plaintiff to obtain from her insurer and produce documents related to a flood damage claim and subsequent electrical work at Plaintiff's home, in response to Interrogatory No. 10 and Request for Production Nos. 13 and 18. [Doc. 30 at 1 and 3-4]; *see also* [Doc. 30-1] and [Doc. 30-2]. Plaintiff did not file a response to this motion within the time prescribed for doing so, which "constitutes consent to grant the motion." D.N.M. LR-Civ. 7.1(b). However, pursuant to Local Rule 26.4(a), a party may not seek discovery "before the parties have conferred as required by Fed. R. Civ. P. 26(f) except by agreement of all parties or by Court order." D.N.M. LR-Civ. 26.4(a). Defendant DIRECTV fails to state whether the parties have conferred as required by Rule 26(f) or whether all parties have agreed to engage in discovery at this point in the case, and there is no Court order entered in

this case allowing discovery at this stage. The Court notes that an initial scheduling order was entered on May 12, 2014, stating that the parties shall meet and confer pursuant to Rule 26(f) “no later than twenty-one (21) days before the initial scheduling conference,” which was scheduled for July 8, 2014. *See [Doc. 9]*. On May 23, 2014, this scheduling conference was vacated (*Doc. 17*) and this case was reassigned to the undersigned as the pretrial judge (*Doc. 18*). Since discovery cannot commence until the parties meet and confer, and since the meet and confer date was tied to the scheduling conference date that was vacated, it is not clear from either the docket or Defendant DIRECTV’s motion to compel whether the parties have conferred pursuant to Rule 26(f). In addition, the Court notes that a motion to dismiss filed by Defendant Mastec, Inc. (*Doc. 16*) is currently pending before the Court, and the undersigned will enter a new initial scheduling order once that motion is ruled on by the presiding judge in this case. Therefore, the Court will deny Defendant DIRECTV’s motion to compel without prejudice since DirecTV has not made a showing that it is properly seeking discovery under Local Rule 26.4(a).

IT IS THEREFORE ORDERED that, for the reasons stated above, *Defendant DIRECTV, LLC’s Motion to Compel (Doc. 30)* is **DENIED without prejudice**.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE